



**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “**Order**”), authorizing the Debtors to redact and file under seal a certain exhibit in the Debtors’ *Emergency Motion for Interim and Final Orders (A)(I) Approving the Settlement by and Between Avis Lamotte, on Her Own Behalf and on Behalf of Others Similarly Situated, and the Debtors, (II) Certifying a Class for Settlement Purposes Only, (III) Appointing the Plaintiff as Class Representative and Plaintiff’s Counsel as Class Counsel for Settlement Purposes Only, (IV) Approving the Form and Manner of Service of the Settlement Class Notice, (V) Appointing the Settlement Administrator, and (IV) Scheduling Final Hearing; and (B) Granting Related Relief* (the “**Settlement Motion**”), filed concurrently herewith.<sup>2</sup>

**Jurisdiction and Venue, and Predicates for Relief**

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The predicates for the relief requested herein are sections 105(a), 107(c), 365, and 554 of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6004, 6006, 6007, and rule 9013-1(b) of the Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Motion.

### **Background**

5. On May 21, 2024, (the “**Petition Date**”), each Debtor (collectively, the “**Debtors**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), commencing the chapter 11 cases.

1. On June 17, 2024, Avis Lamotte (the “**Plaintiff**”), on behalf of herself and all other similarly situated (together with the Debtors, the “**Parties**”), commenced an adversary proceeding, *Avis Lamotte v. Zachry Industrial, Inc.*, Adversary No. 4:24-AP-03122 (the “**Class Action**”), against Zachry, on behalf of herself and purportedly on behalf of the Class Members. Ms. Lamotte’s complaint (the “**Complaint**”) alleges violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the “**WARN Act**”) based on the Debtors’ supposed failure to provide requisite notice of the reduction in force and seeks damages for unpaid wages and benefits.

6. On July 22, 2024, the Debtors filed an Answer and Affirmative Defenses to the Complaint, denying all liability in respect of the allegations in the Complaint. [Adv. D.I. 20].

7. In an effort to resolve the adversary proceeding, the Parties participated in mediation with Ms. Gloria Portela. After weeks of good-faith and arms-length negotiation and mediation since the adversary proceeding was filed on June 2024, the Parties have reached a settlement (the “**Settlement**”) that would fully and completely resolve all disputes, claims, and causes of action relating to the allegations asserted in the Plaintiff’s Class Action complaint. Attached to the Settlement is an Exhibit B (the “**Exhibit**”) which provides the names of all putative Class Members that constitute the Settlement Class (*see* Settlement Agreement § 5). The Debtors seek authority to file the Exhibit under seal.

**BASIS FOR RELIEF**

8. Section 105(a) of the Bankruptcy Code, which codifies the bankruptcy court's inherent equitable powers, empowers the Court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Pursuant to section 107(c) of the Bankruptcy Code, the Court is authorized to issue orders authorizing the sealing of personally identifiable information if the court "finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." Such personally identifiable information includes "any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title." *Id.*

9. Section 1028(d) of title 18, in turn, provides that "means of identification" includes any "name or number that may be used, along or in conjunction with any other information, to identify a specific individual." When such information is present, section 107(c) "permits the bankruptcy court to protect [this information]." *In re N. Bay Gen. Hosp., Inc. v. McNaull (In re N. Bay Gen. Hosp.)*, 404 B.R. 429, 438 (S.D. Tex. 2009). While there is a presumption in favor of public access to court records, access to judicial records is not without limits. *Id.* Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). When read in conjunction with section 105(a) of the Bankruptcy Code, section 107(c) authorizes the Court to take immediate action, including sealing pleadings, to protect parties-in-interest from the immediate and future harm of identity theft associated with the wrongful disclosure of personally identifiable information.

10. The Exhibit includes information that falls under the category of “means of identification.” Specifically, the Exhibit includes the first and last names of certain employees affected by the Settlement. Further, the fact that these putative Class Members are a part of the proposed Settlement Class is sensitive information for both the Debtors and the putative Class Members, who presumably do not want their employment status and/or qualification to receive a Settlement Award publicly known. Accordingly, the Debtors request that the Court permit the Debtors to redact and file under seal the Exhibit.

11. The Debtors submit that the proposed limited redaction is necessary and appropriate under section 107 of the Bankruptcy Code. The Debtors, therefore, request that the Court grant the requested relief.

**Notice**

12. The Debtors will provide notice of this Motion to: (a) Class Counsel; (b) the U.S. Trustee; (c) counsel to the Committee; (d) the United States Attorney’s Office for the Southern District of Texas; (e) the state attorneys general for the states in which the Debtors operate; (f) the Internal Revenue Service; (g) the Prepetition Agent; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). Based on the nature of the relief requested, no other or further notice need be provided.

The Debtors respectfully request that the Court enter the Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

Dated: September 26, 2024  
Houston, Texas

/s/ Charles R. Koster

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*Counsel to the Debtors and  
Debtors in Possession*

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Charles R. Koster  
Charles R. Koster

**Certificate of Service**

I certify that on September 26, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster  
Charles R. Koster

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> <sup>1</sup>	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
	)	

**ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL CERTAIN INFORMATION CONTAINED IN THE DEBTORS’ DEBTORS’ EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (A)(I) APPROVING THE SETTLEMENT BY AND BETWEEN AVIS LAMOTTE, ON HER OWN BEHALF AND ON BEHALF OF OTHERS SIMILARLY SITUATED, AND THE DEBTORS, (II) CERTIFYING A CLASS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINTING THE PLAINTIFF AS CLASS REPRESENTATIVE AND PLAINTIFF’S COUNSEL AS CLASS COUNSEL FOR SETTLEMENT PURPOSES ONLY, (IV) APPROVING THE FORM AND MANNER OF SERVICE OF THE SETTLEMENT CLASS NOTICE, (V) APPOINTING THE SETTLEMENT ADMINISTRATOR, AND (IV) SCHEDULING FINAL HEARING; AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) authorizing the Debtors to redact and file under seal certain portions of the *Debtors’ Emergency Motion for Interim and Final Orders (A)(I) Approving the Settlement by and Between Avis Lamotte, on Her Own Behalf and on Behalf of Others Similarly Situated, and the Debtors, (II) Certifying a Class for Settlement Purposes Only, (III) Appointing the Plaintiff as Class Representative and Plaintiff’s Counsel as Class Counsel for Settlement Purposes Only, (IV) Approving the Form and Manner of Service of*

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<sup>1</sup> The last four digits of Zachry Holdings, Inc.’s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/zhi>. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

<sup>2</sup> Where context requires, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



*the Settlement Class Notice, (V) Appointing the Settlement Administrator, and (IV) Scheduling Final Hearing; and (B) Granting Related Relief* (the “**Settlement Motion**”), all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if applicable (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 107(c) of the Bankruptcy Code, Bankruptcy Rule 9018, and Bankruptcy Local Rule 9037-1, the Debtors are authorized to file the Settlement Motion with the Exhibit under seal.
3. The Exhibit shall remain confidential, shall remain under seal, and shall not be made available to anyone other than this Court, the U.S. Trustee, and counsel to the Committee on a

professional eyes only basis (all on a confidential basis), without further order of this Court. The Clerk of the Court shall treat the Exhibit as confidential.

4. To the extent that the Exhibit is attached or referred to in any further pleadings or documents filed with this Court related to these chapter 11 cases, this Order shall apply to such pleading or document.

5. Any party who receives the Exhibit in accordance with this Order shall not disclose or otherwise disseminate such Exhibit to any other person or entity, without the consent of the Debtors or further order of this Court.

6. Nothing in this Order prejudices the rights of any party in interest, including the U.S. Trustee, to seek, on appropriate motion, the unsealing of the Exhibit or any part thereof.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2024  
Houston, Texas

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THE HON. MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE